

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: BAY STATE GAS COMPANY'S COMPLIANCE
WITH G.L. C. 164, § 1E**

DTE 06-31

**OPPOSITION OF LOCAL 273 TO BERKSHIRE GAS COMPANY PETITION TO
INTERVENE**

Local 273, Utility Workers Union of America, AFL-CIO ("Local 273") hereby opposes the "Petition for Leave to Intervene of the Berkshire Gas Company" filed on May 19, 2006. In support of this opposition, Local 273 states:

1. Berkshire Gas Company ("Berkshire") filed its petition to intervene on May 19, 2006. Other than reciting such basic and required information as its business address and a summary description of the present proceeding, Berkshire's entire substantive argument in support of its petition is as follows:

"5. The Department's investigation in this proceeding will address issues relating to the requirements of §1E(b) and other issues of common concern to gas companies in Massachusetts, including Berkshire.

....

7. Berkshire is likely to be substantially and specifically affected by the Department's findings with respect to these issues of common application.

8. Berkshire expects that its participation will be focused and limited to issues of more general application.

9. Berkshire's interests are unique and cannot be adequately represented by any other party."

2. Berkshire's petition is internally contradictory on its face, does not meet the requirements

of the Department's rules governing interventions, and should not be allowed.

On the one hand, Berkshire seeks to assure the Department that its "participation will be focused and limited to issues of more general application" and that its petition is based on "issues of common application." Berkshire fails to allege how it will be specifically affected by any issue raised in the proceeding. On the other hand, Berkshire implicitly recognizes that a party whose interest in a case is premised solely on issues of "common" or "general" application cannot demonstrate that it is "substantially and specifically" by a proceeding, nor can it demonstrate that its interests will not be adequately represented by more directly-affected parties. Berkshire therefore nakedly alleges that its "interests are unique and cannot be adequately represented by any other party," an assertion belied by the other allegations of its petition. Its only interest is in issues of "common application" and "general application" that will more ably be represented by Bay State, the company which is the direct focus of the Department's inquiry.

3. DTE 06-31 is a unique proceeding, virtually unprecedented in the Department's jurisprudence. It arises after years of efforts by Local 273 to convince the Department that the merger between NiSource and Bay State has created unique and adverse impacts for Bay State's customers, and that the Department should thoroughly investigate the impacts of that merger. The Department's decision in Bay State's rate case, DTE 05-27, in which the Department announced its intent to open the current docket (DTE 05-27, at 417 – 419) is replete with references to facts that are specific to Bay State and which have no bearing on Berkshire Gas or its customers, including the following:

(a) Representations made by Bay State when seeking approval of its merger with NiSource, and allegations of subsequent breach of those representations (DTE 05-27, p. 303 -

304).

(b) Facts regarding “NiSource’s management of its Bay State subsidiary” and statements that “Merriville” (NiSource’s headquarters) is the focus of the Department’s investigation (DTE 05-27, p. 304).

(c) Statements that the Department is concerned about cutbacks in staffing that have already occurred at Bay State, and about the potential impacts of the “outsourcing agreement with IBM” (DTE 05-27, p. 411).

(d) Statements identifying the focus of this investigation as “whether Bay State has engaged in labor displacements that are below statutorily-mandated staffing levels or that otherwise may impede service quality,” and “NiSource’s resource and service decisions” (DTE 05-27, p. 417).

Each of these factors is specific to Bay State and in no way implicates Berkshire or its customers.

4. To the extent that Berkshire is concerned about rules of “common” or “general” application that may apply to companies regarding service quality or staffing levels, there is an existing Department docket, DTE 04-116, in which those precise issues are being addressing generically as to all companies.¹ DTE 04-116 is the appropriate docket for Berkshire to raise any issues it wishes the Department to address. Nothing in the Department’s March 24, 2006 Order Opening Investigation in this docket states or even implies that the Department will be deciding issues that will “substantially and specifically” affect Berkshire, nor has Berkshire

¹ See “Vote to Open Investigation,” DTE 04-116 (Dec. 13, 2004), at 2 - 3 (discussion of staffing level and service quality issues that will be addressed).

offered any explanation of how it will be “substantially and specifically” affected by this proceeding. Berkshire has thus failed to meet the requirements of 220 C.M.R. 1.03(1)(b).

5. Similarly, to the extent that Berkshire is concerned that some party or parties could raise complaints about its own staffing levels, service quality, or relationship with its parent company Energy East, the present docket is not the appropriate forum to address any such issues. It is worth noting that another collective bargaining organization, Local 12325 of the United Steelworkers of America, did file a petition against Berkshire regarding staffing levels and service quality issues more than two years ago, but that petition was subsequently withdrawn.² No other company sought to intervene in the Berkshire docket, and Berkshire should not be allowed to do so here. The Berkshire docket highlights Local 273’s position that specific concerns about a specific company’s service quality, staffing levels and relations with its parent company are best addressed in company-specific dockets, and that other companies which are not the direct subject of those dockets are not “substantially and specifically” affected by those dockets.

6. The Department should also deny Berkshire intervention status in this proceeding as a matter of sound public policy and good administrative practice. If Berkshire’s slender petition is a sufficient basis for being granted intervention status in this proceeding, it would be hard for the Department to find any basis to exclude any other gas or even electric company from intervening, given that every gas and electric company could make the very same general allegations that Berkshire has made regarding issues of “common” or “general” application. Allowing every other regulated company to intervene in any one company’s proceeding will lead

² See DTE 04-44, Motion to Withdraw Complaint dated June 30, 2005.

to unduly burdensome, expensive and time-consuming proceedings.

7. Allowing Berkshire and potentially other regulated companies to intervene in this proceeding will work a manifest prejudice to the interests of Local 273, a party which is much more clearly “substantially and significantly” affected by this proceeding. Local 273 is a small union with only a few hundred members and limited financial resources. Bay State, whose interests are generally adverse to those of Local 273 in this proceeding, has immense resources to spend on DTE proceedings.³ It would be manifestly unfair to Local 273 to allow other utility companies with interests only tangentially related to the present proceeding to intervene and bring to bear their own substantial resources, primarily to promote positions or issues no doubt quite similar if not identical to the positions that Bay State itself will address.

For the reasons stated above, Local 273 respectfully urges the Department to reject Berkshire’s petition to intervene.

Respectfully Submitted,

Charles Harak, Esq.
77 Summer Street, 10th floor
Boston, MA 02110
617 988-0600 (ph)
617 523-7398 (fax)
charak@nclc.org

DATED: May 23, 2006

³ For example, Bay State spent \$2.4 million on DTE 05-27. DTE 05-27 (Nov. 30, 2005), at 164.